

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PROGRESSIVE WEST INSURANCE
COMPANY, an Ohio corporation,

Plaintiff,

v.

BUN BUN TRAN, LEONEL
ARRELLANO,

Defendants.

Civil No. 07cv1999 JAH(POR)

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION**
[DOCS. # 4, 5]

INTRODUCTION

Now pending before the Court is the motion filed by defendant Bun Bun Tran ("defendant" or "Tran") to dismiss the instant complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. The motion has been fully briefed by the parties. After a careful consideration of the pleadings and relevant exhibits submitted by the parties, and for the reasons set forth below, this Court GRANTS defendant's motion to dismiss for lack of subject matter jurisdiction and DISMISSES the instant complaint without prejudice in its entirety.

BACKGROUND

This case stems from a catastrophic automobile accident that occurred on November 18, 2006, between Tran and defendant Leonel Arrellano ("Arrellano"). Compl. ¶ 7. Plaintiff Progressive West Insurance Company ("plaintiff" or "Progressive") insured Arrellano under an automobile policy with a bodily injury liability limit of \$15,000. Id.

¶ 6. Arrellano was the driver of a vehicle that collided with Tran's vehicle causing serious head injuries to Tran leaving him comatose. *Id.* ¶¶ 9, 10. Arrellano, later found to be at fault, was subsequently arrested for driving under the influence of alcohol, driving without a license and leaving the scene of an accident. *Id.* ¶ 12. After a guilty plea, Arrellano was sentenced to six years custody. *Id.* Tran, through his guardian *ad litem*, filed a complaint in the San Diego County Superior Court on May 8, 2007, alleging causes of action for negligence and negligence *per se* against Arrellano, Patricia Cole, Chili's Restaurants and the City of San Diego. *Id.* ¶ 19; Di Monda Decl. ¶ 7. Progressive is not a party to the state court suit.

Progressive filed the instant complaint in this Court on October 16, 2007, seeking declaratory relief pursuant to the Declaratory Judgment Act, *see* 28 U.S.C. § 2201, in the form of a declaration as to the respective rights and duties of the parties involved under the automobile insurance policy issued to Arrellano. Defendant filed the instant motion to dismiss on November 28, 2007 and an amended motion on November 30, 2007. *See* Docs. # 4, 5. Progressive's opposition to the motion was filed on December 27, 2007. Doc. # 6. Defendant's reply brief was filed on January 2, 2008. This Court subsequently took the motion under submission without oral argument. *See* CivLR 7.1(d.1).

DISCUSSION

Defendant moves to dismiss the instant complaint in its entirety for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure on the grounds that plaintiff cannot meet the \$75,000 jurisdictional threshold for diversity jurisdiction.¹ *See* Doc. # 5 at 5.

¹ Although defendant also initially moves to dismiss on the grounds that the issues presented are not ripe for review because there has not been any determination of damages owed by any party, *see* Doc. # 5 at 4, plaintiff correctly points out that the Declaratory Judgment Act "allows adjudication of the parties' rights and obligations on a matter in dispute regardless of whether claims for damages or injunctive relief have yet arisen." Doc. # 6 at 2-3. In reply, defendant does not appear to disagree with plaintiff's position, but instead focuses on his arguments concerning the jurisdictional amount in controversy. *See* Doc. # 7. However, because this Court ultimately finds that subject matter jurisdiction is lacking, this Court does not reach this issue.

1 1. Legal Standard

2 The federal court is one of limited jurisdiction. *See Gould v. Mutual Life Ins. Co.*
 3 *v. New York*, 790 F.2d 769, 774 (9th Cir. 1986). As such, it cannot reach the merits of
 4 any dispute until it confirms its own subject matter jurisdiction. *Steel Co. v. Citizens for*
 5 *a Better Environ.*, 118 S.Ct. 1003, 1012 (1998). “Jurisdiction is power to declare the law,
 6 and when it ceases to exist, the only function remaining to the court is that of announcing
 7 the fact and dismissing the cause.” *Id.* (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.)
 8 506, 614 (1868)). Under Rule 12(b)(1), a defendant may seek to dismiss a complaint for
 9 “lack of jurisdiction over the subject matter.” Fed. R. Civ. P. 12(b)(1). When considering
 10 a Rule 12(b)(1) motion to dismiss, the district court “is free to hear evidence regarding
 11 jurisdiction and to rule on that issue prior to trial, resolving factual disputes where
 12 necessary.” *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). “In such
 13 circumstances, ‘[n]o presumptive truthfulness attaches to plaintiff’s allegations, and the
 14 existence of disputed facts will not preclude the trial court from evaluating for itself the
 15 merits of jurisdictional claims.’” *Id.* (quoting *Thornhill Publishing Co. v. General*
 16 *Telephone & Electronic Corp.*, 594 F.2d 730, 733 (9th Cir. 1979)). Plaintiff, as the party
 17 seeking to invoke jurisdiction, has the burden of establishing that jurisdiction exists. *See*
 18 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

19 “[T]he Declaratory Judgment Act is not a jurisdictional statute” and “does not create
 20 subject matter jurisdiction where none otherwise exists.” *Jarrett v. Resor*, 426 F.2d 213,
 21 216 (9th Cir. 1970). Thus, the basis for federal jurisdiction in a declaratory relief action
 22 must be independent of the Declaratory Relief Act. *See Stock West, Inc. v. Confederated*
 23 *Tribes of Colville Reservations*, 873 F.2d 1221, 1225 (9th Cir. 1989). Here, plaintiff
 24 alleges jurisdiction based solely on diversity. *See* Compl. ¶ 4. To establish diversity
 25 jurisdiction, there must be: (1) complete diversity among opposing parties; and (2) an
 26 amount in controversy exceeding \$75,000. *See* 28 U.S.C. § 1332(a). In declaratory relief
 27 actions, “the amount in controversy is measured by the value of the object of the
 28 litigation” and dismissal is appropriate only if it appears to a “legal certainty” that the

jurisdictional amount is not met. Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 346-48 (1977); Cohn v. Petsmart, Inc., 282 F.3d 837, 840 (9th Cir. 2002). It is well settled that the amount in controversy is determined at the time the complaint is filed. St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1938).

2. Analysis

In support of his contention that the jurisdictional amount in controversy has not been met, defendant points out that the \$75,000 diversity jurisdiction threshold exceeds Progressive's contractual liability under the \$15,000 policy issued to Arrellano. Doc. # 5 at 5. Defendant argues that plaintiff seeks to improperly include its potential liability in the amount in controversy calculation. Id. at 5-6. Thus, defendant contends that any liability above Progressive's \$15,000 policy limits is too speculative and, therefore, plaintiff "cannot show to a legal certainty what its financial exposure may be when the lawsuit is adjudicated." Id. at 6.

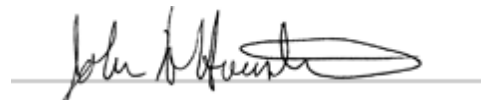
Plaintiff contends that the jurisdictional threshold has been met here because there is a potential for liability well exceeding \$75,000. *See* Doc. # 6 at 7. Plaintiff claims that Tran's underlying claim against Arrellano, which was valued in excess of \$700,000 as of January 26, 2007 and is expected to "reach tens of millions of dollars," id. at 8 (quoting Doc. # 5 at 3), is the proper measure of the jurisdictional amount in controversy because that amount is Progressive's potential liability in Tran's future claim against it.² Id. Plaintiff explains that the purpose of the instant lawsuit is simply to obtain a determination as to whether a letter sent by Tran's counsel to Progressive constitutes a "legally cognizable 'policy limits demand.'" Id. at 9. According to plaintiff, if the letter is found not to be such a demand, then plaintiff's "indemnity obligation [will] still [be] defined by the stated \$15,000 limits under the policy." Id.

This Court is unconvinced that inclusion of potential liability based on a possible

² Plaintiff's complaint alleges that Tran's attorney "intends to obtain a judgment against Mr. Arrellano and then sue Progressive on behalf of Mr. Tran for breach of contract and breach of the implied covenant of good faith and fair dealing for failure to settle Mr. Tran's claim within policy limits" and "has accused Progressive of misconduct and claims Progressive's failure to accept [the] January 26, 2007 policy limits demand has eliminated the stated limits of the policy." Compl. ¶¶ 20, 21.

1 future lawsuit that may or may not be filed by Tran's counsel is an appropriate measure
2 of the amount in controversy for diversity jurisdiction to exist here. At the time the
3 instant lawsuit was filed, Progressive's liability under the policy issued to Arrellano was
4 capped at the policy limits of \$15,000. In fact, the relief plaintiff is seeking in the instant
5 complaint is a declaration that its liability is also capped at that amount. This Court finds
6 that plaintiff cannot meet its burden of demonstrating that the amount in controversy in
7 this case exceeds the \$75,000 threshold required at the time the lawsuit was filed because
8 the policy at bar limits liability to \$15,000 and there is only a potential that Progressive's
9 liability might exceed that limit. *See Kokkonen*, 511 U.S. at 377. Therefore, this Court
10 finds dismissal is appropriate because it appears to a "legal certainty" that the
11 jurisdictional amount cannot be met. *Hunt*, 432 U.S. at 346-48. Accordingly,
12 defendant's motion to dismiss for lack of subject matter jurisdiction [docs. # 4, 5] is
13 **GRANTED** and the instant complaint is **DISMISSED WITHOUT PREJUDICE** in its
14 **entirety** for lack of subject matter jurisdiction.

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16 Dated: April 28, 2008

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18 JOHN A. HOUSTON
19 United States District Judge
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